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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 60 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NARENDRA L PATEL

Appearance:

MR AKIL QURESHI WITH MR MANISH R BHATT for Petitioner No.1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following two questions have been referred to this Court for its opinion under the provisions of section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench "B".

1. "Whether, in law and on facts the assessee who is a professional is entitled to investment allowance under section 32-A of the I.T.Act, 1961 in respect of the radiology machine used for his work as radiologist ? "

2. "When the assessee has income from profession and not from business, is the assessee entitled to investment allowance under sec. 32-A of the I.T. Act, 1961 as claimed ?"

2. Learned Advocate Shri Akil Qureshi has appeared for the applicant. Though served, nobody has appeared for the respondent assessee.

3. The assessee, a Radiologist had purchased a machine for taking X-ray photographs and had claimed deduction under the provisions of section 32-A of the Act. The deduction claimed was not granted by the Assessing Officer because according to the Assessing Officer, the assessee was a professional, as his income was mainly from his profession.

4. Being aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Appellate Assistant Commissioner. In the appeal, the view expressed by the Assessing Officer was confirmed by the appellate authority.

5. In the circumstances, the assessee approached the tribunal by filing an appeal. The tribunal allowed the appeal of the assessee by following an order passed by the Special Bench in the case of ITO Vs. Dr.P.V. Bhatt (1984) 41 CTR (Tribunal) 6.

5. We have heard learned Advocate Shri Akil Qureshi and have also perused judgement delivered by this Court in the case of Natvarlal Ambalal Dave Vs. Commissioner of Income-Tax, 225 ITR 936. A similar question had arisen in the said case. After considering several relevant factors, this Court declined to answer the

question for the reasons that it was not certain whether there was an element of business in the activities of the assessee. In the said case it was observed by this Court that though the assessee in the said case was a Radiologist, and as such was mainly a professional person, he could have earned his income also from business. In the circumstances, this Court directed the tribunal to look into the facts of the case and decide the case in the light of the observations made in the said judgement.

6. Looking to the facts of the present case, we are also of the view that it has not been examined by the revenue authorities whether the assessee, in the instant case, was also engaged in a business. Though the assessee is a Radiologist, one cannot rule out a possibility of his earning income by way of business or there might be an element of business in his activity of taking X-ray photographs.

7. Looking to the above fact, we are also of the view that the tribunal should first of all find out whether the assessee was also doing business and after ascertaining the said fact, in the light of the observations made by this Court in the case of Natvarlal Ambalal Dave (supra), appropriate decision should be taken by the tribunal.

8. In the circumstances, we decline to answer the questions referred to this Court and direct the tribunal to do the needful and take appropriate decision as directed hereinabove.

The reference stands disposed of accordingly with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)

'Bhavesh'